

## **§ 96.31**

all information necessary to attribute NO<sub>x</sub> emissions to the unit, in accordance with subpart H of this part;

(3) Whether all the NO<sub>x</sub> emissions from the unit, or a group of units (including the unit) using a common stack, were monitored or accounted for through the missing data procedures and reported in the quarterly monitoring reports, including whether conditional data were reported in the quarterly reports in accordance with subpart H of this part. If conditional data were reported, the owner or operator shall indicate whether the status of all conditional data has been resolved and all necessary quarterly report resubmissions has been made;

(4) Whether the facts that form the basis for certification under subpart H of this part of each monitor at the unit or a group of units (including the unit) using a common stack, or for using an excepted monitoring method or alternative monitoring method approved under subpart H of this part, if any, has changed; and

(5) If a change is required to be reported under paragraph (c)(4) of this section, specify the nature of the change, the reason for the change, when the change occurred, and how the unit's compliance status was determined subsequent to the change, including what method was used to determine emissions when a change mandated the need for monitor recertification.

### **§ 96.31 Permitting authority's and Administrator's action on compliance certifications.**

(a) The permitting authority or the Administrator may review and conduct independent audits concerning any compliance certification or any other submission under the NO<sub>x</sub> Budget Trading Program and make appropriate adjustments of the information in the compliance certifications or other submissions.

(b) The Administrator may deduct NO<sub>x</sub> allowances from or transfer NO<sub>x</sub> allowances to a unit's compliance account or a source's overdraft account based on the information in the compliance certifications or other submissions, as adjusted under paragraph (a) of this section.

## **40 CFR Ch. I (7–1–10 Edition)**

### **Subpart E—NO<sub>x</sub> Allowance Allocations**

#### **§ 96.40 State trading program budget.**

The State trading program budget allocated by the permitting authority under § 96.42 for a control period will equal the total number of tons of NO<sub>x</sub> emissions apportioned to the NO<sub>x</sub> Budget units under § 96.4 in the State for the control period, as determined by the applicable, approved State implementation plan.

#### **§ 96.41 Timing requirements for NO<sub>x</sub> allowance allocations.**

(a) By September 30, 1999, the permitting authority will submit to the Administrator the NO<sub>x</sub> allowance allocations, in accordance with § 96.42, for the control periods in 2003, 2004, and 2005.

(b) By April 1, 2003 and April 1 of each year thereafter, the permitting authority will submit to the Administrator the NO<sub>x</sub> allowance allocations, in accordance with § 96.42, for the control period in the year that is three years after the year of the applicable deadline for submission under this paragraph (b). If the permitting authority fails to submit to the Administrator the NO<sub>x</sub> allowance allocations in accordance with this paragraph (b), the Administrator will allocate, for the applicable control period, the same number of NO<sub>x</sub> allowances as were allocated for the preceding control period.

(c) By April 1, 2004 and April 1 of each year thereafter, the permitting authority will submit to the Administrator the NO<sub>x</sub> allowance allocations, in accordance with § 96.42, for any NO<sub>x</sub> allowances remaining in the allocation set-aside for the prior control period.

#### **§ 96.42 NO<sub>x</sub> allowance allocations.**

(a)(1) The heat input (in mmBtu) used for calculating NO<sub>x</sub> allowance allocations for each NO<sub>x</sub> Budget unit under § 96.4 will be:

(i) For a NO<sub>x</sub> allowance allocation under § 96.41(a), the average of the two highest amounts of the unit's heat input for the control periods in 1995, 1996, and 1997 if the unit is under § 96.4(a)(1) or the control period in 1995 if the unit is under § 96.4(a)(2); and

(ii) For a NO<sub>x</sub> allowance allocation under § 96.41(b), the unit's heat input

for the control period in the year that is four years before the year for which the NO<sub>x</sub> allocation is being calculated.

(2) The unit's total heat input for the control period in each year specified under paragraph (a)(1) of this section will be determined in accordance with part 75 of this chapter if the NO<sub>x</sub> Budget unit was otherwise subject to the requirements of part 75 of this chapter for the year, or will be based on the best available data reported to the permitting authority for the unit if the unit was not otherwise subject to the requirements of part 75 of this chapter for the year.

(b) For each control period under § 96.41, the permitting authority will allocate to all NO<sub>x</sub> Budget units under § 96.4(a)(1) in the State that commenced operation before May 1 of the period used to calculate heat input under paragraph (a)(1) of this section, a total number of NO<sub>x</sub> allowances equal to 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of the tons of NO<sub>x</sub> emissions in the State trading program budget apportioned to electric generating units under § 96.40 in accordance with the following procedures:

(1) The permitting authority will allocate NO<sub>x</sub> allowances to each NO<sub>x</sub> Budget unit under § 96.4(a)(1) in an amount equaling 0.15 lb/mmBtu multiplied by the heat input determined under paragraph (a) of this section, rounded to the nearest whole NO<sub>x</sub> allowance as appropriate.

(2) If the initial total number of NO<sub>x</sub> allowances allocated to all NO<sub>x</sub> Budget units under § 96.4(a)(1) in the State for a control period under paragraph (b)(1) of this section does not equal 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of the number of tons of NO<sub>x</sub> emissions in the State trading program budget apportioned to electric generating units, the permitting authority will adjust the total number of NO<sub>x</sub> allowances allocated to all such NO<sub>x</sub> Budget units for the control period under paragraph (b)(1) of this section so that the total number of NO<sub>x</sub> allowances allocated equals 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of the number of tons of NO<sub>x</sub> emissions in the State trading program budget apportioned to electric generating units. This adjustment will

be made by: multiplying each unit's allocation by 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of the number of tons of NO<sub>x</sub> emissions in the State trading program budget apportioned to electric generating units divided by the total number of NO<sub>x</sub> allowances allocated under paragraph (b)(1) of this section, and rounding to the nearest whole NO<sub>x</sub> allowance as appropriate.

(c) For each control period under § 96.41, the permitting authority will allocate to all NO<sub>x</sub> Budget units under § 96.4(a)(2) in the State that commenced operation before May 1 of the period used to calculate heat input under paragraph (a)(1) of this section, a total number of NO<sub>x</sub> allowances equal to 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of the tons of NO<sub>x</sub> emissions in the State trading program budget apportioned to non-electric generating units under § 96.40 in accordance with the following procedures:

(1) The permitting authority will allocate NO<sub>x</sub> allowances to each NO<sub>x</sub> Budget unit under § 96.4(a)(2) in an amount equaling 0.17 lb/mmBtu multiplied by the heat input determined under paragraph (a) of this section, rounded to the nearest whole NO<sub>x</sub> allowance as appropriate.

(2) If the initial total number of NO<sub>x</sub> allowances allocated to all NO<sub>x</sub> Budget units under § 96.4(a)(2) in the State for a control period under paragraph (c)(1) of this section does not equal 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of the number of tons of NO<sub>x</sub> emissions in the State trading program budget apportioned to non-electric generating units, the permitting authority will adjust the total number of NO<sub>x</sub> allowances allocated to all such NO<sub>x</sub> Budget units for the control period under paragraph (c)(1) of this section so that the total number of NO<sub>x</sub> allowances allocated equals 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of the number of tons of NO<sub>x</sub> emissions in the State trading program budget apportioned to non-electric generating units. This adjustment will be made by: multiplying each unit's allocation by 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of the number of tons of NO<sub>x</sub> emissions in the State trading program

budget apportioned to non-electric generating units divided by the total number of NO<sub>x</sub> allowances allocated under paragraph (c)(1) of this section, and rounding to the nearest whole NO<sub>x</sub> allowance as appropriate.

(d) For each control period under § 96.41, the permitting authority will allocate NO<sub>x</sub> allowances to NO<sub>x</sub> Budget units under § 96.4 in the State that commenced operation, or is projected to commence operation, on or after May 1 of the period used to calculate heat input under paragraph (a)(1) of this section, in accordance with the following procedures:

(1) The permitting authority will establish one allocation set-aside for each control period. Each allocation set-aside will be allocated NO<sub>x</sub> allowances equal to 5 percent in 2003, 2004, and 2005, or 2 percent thereafter, of the tons of NO<sub>x</sub> emissions in the State trading program budget under § 96.40, rounded to the nearest whole NO<sub>x</sub> allowance as appropriate.

(2) The NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> Budget unit under paragraph (d) of this section may submit to the permitting authority a request, in writing or in a format specified by the permitting authority, to be allocated NO<sub>x</sub> allowances for no more than five consecutive control periods under § 96.41, starting with the control period during which the NO<sub>x</sub> Budget unit commenced, or is projected to commence, operation and ending with the control period preceding the control period for which it will receive an allocation under paragraph (b) or (c) of this section. The NO<sub>x</sub> allowance allocation request must be submitted prior to May 1 of the first control period for which the NO<sub>x</sub> allowance allocation is requested and after the date on which the permitting authority issues a permit to construct the NO<sub>x</sub> Budget unit.

(3) In a NO<sub>x</sub> allowance allocation request under paragraph (d)(2) of this section, the NO<sub>x</sub> authorized account representative for units under § 96.4(a)(1) may request for a control period NO<sub>x</sub> allowances in an amount that does not exceed 0.15 lb/mmBtu multiplied by the NO<sub>x</sub> Budget unit's maximum design heat input (in mmBtu/hr) multiplied by the number of hours remaining in the control period starting with the first

day in the control period on which the unit operated or is projected to operate.

(4) In a NO<sub>x</sub> allowance allocation request under paragraph (d)(2) of this section, the NO<sub>x</sub> authorized account representative for units under § 96.4(a)(2) may request for a control period NO<sub>x</sub> allowances in an amount that does not exceed 0.17 lb/mmBtu multiplied by the NO<sub>x</sub> Budget unit's maximum design heat input (in mmBtu/hr) multiplied by the number of hours remaining in the control period starting with the first day in the control period on which the unit operated or is projected to operate.

(5) The permitting authority will review, and allocate NO<sub>x</sub> allowances pursuant to, each NO<sub>x</sub> allowance allocation request under paragraph (d)(2) of this section in the order that the request is received by the permitting authority.

(i) Upon receipt of the NO<sub>x</sub> allowance allocation request, the permitting authority will determine whether, and will make any necessary adjustments to the request to ensure that, for units under § 96.4(a)(1), the control period and the number of allowances specified are consistent with the requirements of paragraphs (d)(2) and (3) of this section and, for units under § 96.4(a)(2), the control period and the number of allowances specified are consistent with the requirements of paragraphs (d)(2) and (4) of this section.

(ii) If the allocation set-aside for the control period for which NO<sub>x</sub> allowances are requested has an amount of NO<sub>x</sub> allowances not less than the number requested (as adjusted under paragraph (d)(5)(i) of this section), the permitting authority will allocate the amount of the NO<sub>x</sub> allowances requested (as adjusted under paragraph (d)(5)(i) of this section) to the NO<sub>x</sub> Budget unit.

(iii) If the allocation set-aside for the control period for which NO<sub>x</sub> allowances are requested has a smaller amount of NO<sub>x</sub> allowances than the number requested (as adjusted under paragraph (d)(5)(i) of this section), the permitting authority will deny in part the request and allocate only the remaining number of NO<sub>x</sub> allowances in

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the allocation set-aside to the NO<sub>x</sub> Budget unit.

(iv) Once an allocation set-aside for a control period has been depleted of all NO<sub>x</sub> allowances, the permitting authority will deny, and will not allocate any NO<sub>x</sub> allowances pursuant to, any NO<sub>x</sub> allowance allocation request under which NO<sub>x</sub> allowances have not already been allocated for the control period.

(6) Within 60 days of receipt of a NO<sub>x</sub> allowance allocation request, the permitting authority will take appropriate action under paragraph (d)(5) of this section and notify the NO<sub>x</sub> authorized account representative that submitted the request and the Administrator of the number of NO<sub>x</sub> allowances (if any) allocated for the control period to the NO<sub>x</sub> Budget unit.

(e) For a NO<sub>x</sub> Budget unit that is allocated NO<sub>x</sub> allowances under paragraph (d) of this section for a control period, the Administrator will deduct NO<sub>x</sub> allowances under § 96.54(b) or (e) to account for the actual utilization of the unit during the control period. The Administrator will calculate the number of NO<sub>x</sub> allowances to be deducted to account for the unit's actual utilization using the following formulas and rounding to the nearest whole NO<sub>x</sub> allowance as appropriate, provided that the number of NO<sub>x</sub> allowances to be deducted shall be zero if the number calculated is less than zero:

NO<sub>x</sub> allowances deducted for actual utilization for units under § 96.4(a)(1) = (Unit's NO<sub>x</sub> allowances allocated for control period) - (Unit's actual control period utilization × 0.15 lb/mmBtu); and

NO<sub>x</sub> allowances deducted for actual utilization for units under § 96.4(a)(2) = (Unit's NO<sub>x</sub> allowances allocated for control period) - (Unit's actual control period utilization × 0.17 lb/mmBtu)

Where:

“Unit's NO<sub>x</sub> allowances allocated for control period” is the number of NO<sub>x</sub> allowances allocated to the unit for the control period under paragraph (d) of this section; and

“Unit's actual control period utilization” is the utilization (in mmBtu), as defined in § 96.2, of the unit during the control period.

(f) After making the deductions for compliance under § 96.54(b) or (e) for a control period, the Administrator will notify the permitting authority whether any NO<sub>x</sub> allowances remain in the allocation set-aside for the control period. The permitting authority will allocate any such NO<sub>x</sub> allowances to the NO<sub>x</sub> Budget units in the State using the following formula and rounding to the nearest whole NO<sub>x</sub> allowance as appropriate:

Unit's share of NO<sub>x</sub> allowances remaining in allocation set-aside = Total NO<sub>x</sub> allowances remaining in allocation set-aside × (Unit's NO<sub>x</sub> allowance allocation ÷ State trading program budget excluding allocation set-aside)

Where:

“Total NO<sub>x</sub> allowances remaining in allocation set-aside” is the total number of NO<sub>x</sub> allowances remaining in the allocation set-aside for the control period to which the allocation set-aside applies;

“Unit's NO<sub>x</sub> allowance allocation” is the number of NO<sub>x</sub> allowances allocated under paragraph (b) or (c) of this section to the unit for the control period to which the allocation set-aside applies; and

“State trading program budget excluding allocation set-aside” is the State trading program budget under § 96.40 for the control period to which the allocation set-aside applies multiplied by 95 percent if the control period is in 2003, 2004, or 2005 or 98 percent if the control period is in any year thereafter, rounded to the nearest whole NO<sub>x</sub> allowance as appropriate.

[63 FR 57514, Oct. 27, 1998, as amended at 63 FR 71225, Dec. 24, 1998]

### Subpart F—NO<sub>x</sub> Allowance Tracking System

#### § 96.50 NO<sub>x</sub> Allowance Tracking System accounts.

(a) *Nature and function of compliance accounts and overdraft accounts.* Consistent with § 96.51(a), the Administrator will establish one compliance account for each NO<sub>x</sub> Budget unit and one overdraft account for each source with one or more NO<sub>x</sub> Budget units. Allocations of NO<sub>x</sub> allowances pursuant to subpart E of this part or § 96.88 and deductions or transfers of NO<sub>x</sub> allowances pursuant to § 96.31, § 96.54, § 96.56, subpart G of this part, or subpart I of